

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK**

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PHYLLIS ANDREWS, *et al.*,

Plaintiffs,

v.

Civil Action No. 07-3368 (SCR)

ARTHUR B. MODELL,

Defendant.

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**DEFENDANT'S OPPOSITION TO  
PLAINTIFFS' MOTION TO REMAND**

**EXHIBIT 3**

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**Robert Andrews**

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1  
2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF MARYLAND

4 THOMAS E. MINOGUE, Trustee and THOMAS O.  
5 CALLAGHAN, Co-Trustee of the PHYLLIS ANDREWS  
6 FAMILY TRUST, et al.,

7 Plaintiffs,

8 vs. No. 1:03-CV-03391

9 ARTHUR B. MODELL,

ORIGINAL

10 Defendant.  
11 -----)

12 DEPOSITION OF ROBERT ANDREWS  
13 Armonk, New York  
14 Monday, May 10, 2004  
15  
16  
17  
18  
19  
20

21 Reported by:  
22 Alison M. Pisciotta  
23 JOB NO. 160168  
24  
25

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2 facts surrounding the creation of that trust?

3 A Yes, I have some information on that  
4 trust.

5 Q What information do you have, sir?

6 A It was recommended to her by a law  
7 firm that specializes in wills, trusts and  
8 estates.

9 Q What law firm was that?

10 A Cummings, Lochwood. Stamford,  
11 Connecticut.

12 Q Do you know why the trust was  
13 established?

14 A I believe if you ask the attorneys,  
15 it's a better way of succession than not  
16 doing a trust.

17 Q Do you know what the assets of the  
18 trust were, sir?

19 A There is money in the trust.

20 Q How much money is in the trust, sir?

21 A I believe it was \$200,000 in the  
22 trust.

23 Q What was the source or the origin of  
24 that money?

25 A It was gifted into the trust.

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2 Q From whom?

3 A From Phyllis Andrews.

4 Q When did that occur?

5 A This time frame.

6 Q This time frame meaning what, sir?

7 A '99.

8 Q Other than the \$200,000, did the  
9 trust have any other assets in 1999, sir?

10 A The trust exchanged its money for the  
11 interest in the team, the contract.

12 Q Sorry, I don't quite follow that.  
13 Could you explain that to me. Explain your  
14 answer. I just didn't follow it.

15 A The trust exchanged the money for the  
16 contract between my father and Art Modell.

17 Q Well, sir, are you saying the trust  
18 transferred the \$200,000 to somebody?

19 A Trust bought the contract from  
20 Phyllis Andrews.

21 Q Is that the source of the \$200,000?

22 A I don't understand that.

23 Q Okay. Fair enough. Let me ask it  
24 this way, sir. What do you understand the  
25 assets of the trust to be as of 1999?

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2 Q Any other lawyers that you recall  
3 hearing to have been lawyers who represented  
4 your father or his company?

5 A No, I can't think of any right now.

6 Q Were you ever told or do you have any  
7 information, sir, that subsequent to the date  
8 of the letter agreement between your father  
9 and Mr. Modell in February of 1963, whether  
10 your father did any work for Mr. Modell?

11 A When I got to the office in '72,  
12 around there, I believe somebody there said  
13 they used to do books and records or  
14 something for Mr. Modell. But I don't think  
15 it was going on when I was there.

16 Q Have you looked to see if your  
17 company has any books or records that relate  
18 to any work that either it or your father's  
19 predecessor company did for Mr. Modell?

20 A I haven't looked at that, no.

21 Q Have either you personally or the  
22 Vincent Andrews Management Company been  
23 involved in federal bankruptcy procedures?

24 A Yes, we have.

25 Q You personally or the company or

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2 both?

3 A Both.

4 Q When were those proceedings  
5 commenced, sir?

6 A 1994.

7 Q What precipitated that?

8 A We were in a contractual dispute and  
9 we were facing a jury loss and we had no way  
10 of posting a bond or paying the bill, so we  
11 put ourselves into bankruptcy until we could  
12 work out the appeal process.

13 Q Do I understand your testimony  
14 correctly, both you personally and the  
15 company filed for bankruptcy?

16 A Yes.

17 Q Did your brother Vincent Andrews also  
18 file?

19 A Yes.

20 Q What is the status of those  
21 proceedings?

22 A It's on appeal. We had a  
23 determination in our favor. The plaintiffs  
24 get a second shot at that. That's in the  
25 appellate court right now.

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2 Q What is on appeal, if you know?

3 A We appealed the verdict in the case.

4 Q You are talking about the underlying  
5 case?

6 A Uh-huh.

7 Q Is that what you are talking about,  
8 sir?

9 A Let's start from scratch.

10 Q What's the status of the bankruptcy  
11 case?

12 A Everything in the bankruptcy case is  
13 on hold waiting to find out what happens in  
14 the other case.

15 Q The other case to which you refer is  
16 what?

17 A The underlying case which we lost in  
18 the California lower court, which was  
19 overturned in the appellate court. But as I  
20 said, they get a second opportunity at that.  
21 That's up in the appellate level right now.

22 Q Let's get this straight. You are  
23 talking about the underlying case, what case  
24 is that?

25 A There is a contract dispute between

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2 Lefit Pincay and Chris McCarron and Vincent  
3 Andrews Management Corporation and Vincent  
4 Andrews and Robert Andrews.

5 Q The nature of that dispute is what?

6 A They claim they paid additional  
7 management fees over and above what they  
8 thought was the only fee they should be  
9 paying. We said that the additional fees  
10 that you paid for were outside the scope of  
11 your initial retainer. That with  
12 specifically had you signed off on the  
13 additional fees in writing. They said they  
14 ~~read the documents~~, they never read those  
15 documents and they couldn't be held for the  
16 additional fees.

17 Q And do I understand your testimony  
18 correctly that that case has been tried?

19 A That case was over in '92.

20 Q There was a trial, was there not?

21 A Yes, there was.

22 Q Was it a jury trial?

23 A Yes, it was.

24 Q I'm correct, am I not, that the jury  
25 returned a verdict in favor of the plaintiffs



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2 McCarron and Pincay and against you, your  
3 brother and the Vincent Andrews Management  
4 Company, correct?

5 A That's correct.

6 Q That verdict was in what amount?

7 A I don't remember the exact numbers  
8 but it was a couple of million dollars.

9 Q Do you recall what the legal claims  
10 were in that case, sir?

11 A The first instance it was a RECO  
12 claim. Okay. That was the basis for the  
13 that decision.

14 Q Were there any other claims?

15 A Then you had the second claim under  
16 the state law issues. That was the second  
17 set of claims. The first set of claims were  
18 dismissed by the appellate court. Second set  
19 of claims are up at the appellate level now.

20 Q Point of fact, isn't it true, that  
21 what happened was that the jury returned a  
22 verdict both on the RECO claim and on the  
23 fraud claim. Then the appellate court ruled  
24 that the RECO claim was barred by the statute  
25 of limitations?

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2 A No. I don't think that's accurate at  
3 all. I think the jury returned a verdict  
4 under a RECO claim. Then also under a  
5 punitive damages claim. I don't know the  
6 term fraud was ever in there.

7 Q Punitive damages, common law,  
8 punitive damages?

9 A The appellate court ruled that they  
10 knew the law case now is they probably knew  
11 they constructively they had to have known  
12 what was in these contracts and therefore  
13 because they knew they can't say that they  
14 ~~didn't know and the statute of limitations~~  
15 prevents that.

16 Q But the common law punitive damages  
17 claim, what is the status of that?

18 A That's now under appeal. In the 9th  
19 circuit in California.

20 Q Hasn't the 9th circuit in fact  
21 affirmed that, sir?

22 A No, it hasn't.

23 Q Are you aware of any issue in the  
24 case about failure to file a timely appeal?

25 A Yes, but on Friday the 9th circuit

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2 agreed to take over that issue on bank and  
3 they avoided the one you are referring to.

4 Q But you are aware of that issue, are  
5 you not, sir?

6 A Yes.

7 Q That there was an issue as to whether  
8 the failure to file an appeal within 30 days  
9 as provided by the federal rules was  
10 excusable negligent, correct?

11 A Yes.

12 Q Have you filed any claims against the  
13 counsel in that case, sir?

14 A No, I haven't.

15 Q Do you have any agreement with  
16 counsel in that case for as it relates to  
17 counsel's representation of you in this case?

18 MR. HAYES: I have given you a lot of  
19 leeway, Mr. Tyler. Particularly for  
20 someone who has made a lot of noise about  
21 the confidentiality, privacy concerns of  
22 his client.

23 I would ask you and you can do it  
24 without the witness here to tell me what  
25 this line of questioning has to do with

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2 anything in this case other than  
3 harassing the people in this room.

4 Would you like to do that with the  
5 witness present or with the witness  
6 excused?

7 MR. TYLER I would like to ask the  
8 questions.

9 MR. HAYES: We have had enough on  
10 this line of questioning. If you don't  
11 want to explain the basis for the  
12 questioning with the witness either here  
13 or outside of the room, I'm going to ask  
14 you to move on.

15 Q Do you have an agreement with  
16 counsel, sir, to withhold filing any claim  
17 against them for failing to file a timely  
18 appeal?

19 MR. HAYES: Mr. Tyler was there  
20 something about the last thing I said  
21 that was not clear?

22 MR. TYLER: Sir, I take no  
23 instructions from you. You understand  
24 that.

25 MR. HAYES: No. I do understand that

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2 but you understand particularly if you  
3 refuse to confer with me, even with the  
4 witness out of the room, about what point  
5 this line of questioning has with this  
6 case, I have the right to suspend the  
7 deposition and seek a protective order.  
8 Let me finish. Since you are refusing  
9 even to discuss outside the witnesses  
10 presence what purpose this line of  
11 questioning has, other than harassment,  
12 I'm reluctantly forced to assume that it  
13 has no purpose other than harassment.  
14 Therefore, I'm telling you for the second  
15 time, that if you don't move on, I will  
16 suspend the deposition and seek a  
17 protective order.

18 MR. TYLER: We will just call the  
19 judge.

20 MR. HAYES: You can call the judge.

21 Q Let me make it clear, sir. Your  
22 counsel in the Pincay and McCarron case --

23 MR. HAYES: You don't need to lecture  
24 the witness. It's not a question. It's  
25 the same darn topic.

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2 MR. TYLER: It's a different  
3 question.

4 Q Is it correct sir, that your counsel  
5 in the Pincay and McCarron case is the same  
6 counsel as you have in this case against Mr.  
7 Modell?

8 MR. HAYES: What does that have to do  
9 with anything? Of course it's all about  
10 the same topic. You know you are asking  
11 what the 9th circuit decided. You want a  
12 copy of the order from Friday you can get  
13 it. The majority of the active judge on  
14 the 9th circuit decided appellate  
15 decision was sufficiently of concern to  
16 merit review.

17 Why don't you stop behaving  
18 inappropriately, going into completely  
19 irrelevant things and finish your  
20 examination on issues in this case?

21 MR. TYLER: I'm entitled to have an  
22 answer to this question.

23 Q Is your counsel in this case the same  
24 as your counsel in the Pincay and McCarron  
25 case?

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2 MR. HAYES: We are going to take a  
3 break. Come on, take a break.

4 MR. TYLER: Are you instructing the  
5 witness not to answer that question?

6 MR. HAYES: I have told you three  
7 times now. You are interrupting me. I  
8 have told you three times if you don't  
9 move on to a relevant topic we will  
10 suspend the deposition and move for a  
11 protective order.

12 I'm now giving you an opportunity to  
13 behave like a gentleman by taking a  
14 break. We can come back, you can climb  
15 down off your perch you are on. We can  
16 finish the deposition. We are taking a  
17 break.

18 MR. TYLER: Same question will be  
19 pending upon your return, sir.

20 MR. HAYES: Great.

21 (Recess.)

22 Q Mr. Andrews, is your interest in the  
23 letter agreement Exhibit 4 reported anywhere  
24 as an asset in connection with your personal  
25 bankruptcy proceeding?